

Legislative Council
Subcommittee on Issues Relating to
Shopping Centres, Markets and Carparks in
Public Rental Housing Estates and Home Ownership Scheme Estates

Supplementary Information

The Subcommittee on Issues Relating to Shopping Centres, Markets and Carparks in Public Rental Housing Estates and Home Ownership Scheme Estates (the Subcommittee) requested, in its letters dated 6 July, 10 July and 16 July 2018, the Government to provide supplementary information in response to Hon LEUNG Yiu-chung's letter of 5 July 2018, Hon Jeremy TAM Man-ho's letter of 6 July 2018 and Hon AU Nok-hin's letter of 8 July 2018 to the Subcommittee Chairman. Furthermore, the Subcommittee requested, in its letters dated 17 July and 16 October 2018, the Government to respond to two motions passed at the Subcommittee meeting on 9 July 2018, and to submit document as reference material for the Subcommittee's discussion of the agenda item of "Practical Solutions to Issues Relating to the Divested Retail and Carparking Facilities in Public Housing Estates; and the Suggestion of Buying Back Link" at its meeting on 30 October 2018.

2. This document provides information relating to public markets (paragraphs 4 to 5); non-domestic facilities in public housing under the Hong Kong Housing Authority (HA) (paragraphs 6 to 9); enforcement of land lease conditions (paragraphs 10 to 12); split-ratio covenant (paragraphs 13 to 18); single-operator markets under HA (paragraphs 19 to 24); and buying back of divested properties (paragraphs 25 and 26).

3. As indicated in the Government's paper for the Subcommittee in February 2018¹, residents of public housing, as members of the general public, have their needs for shopping, carparking, etc. fulfilled through various means, including facilities provided by public and private organisations. At present, the Government is providing facilities such as public markets and public carparks in various districts. Besides, commercial facilities are provided in HA's public housing, such as shops and parking spaces, some of which are owned and operated by private property owners. Meanwhile, private entities offer a variety of goods and services to the public through various channels, including the operation of carparks, shopping centres, retail shops, and online selling platforms, etc.

¹ Paper No.: CB(4)634/17-18(01).

Public Markets

4. For public markets, as announced in the Chief Executive 2018 Policy Address, the Government has completed the studies on site selection of new public markets, and plans to spare space at the section of Tin Fuk Road outside Tin Shui Wai MTR Station for building a new public market; the public market in Tung Chung will be built at the lower floors of a commercial building in Area 6, which is adjacent to Tung Chung MTR Station. The Government is now conducting local consultation on the location and design, and will further explore the mode of operation of the new markets. The Government is also identifying sites for public markets in Tseung Kwan O and Kwu Tung North New Development Area so as to provide more choices to the public in purchasing fresh food.

5. When considering the need and feasibility to provide new public markets, the Government will take into account relevant factors, including the population and demographic mix of the area; community needs; the availability of market facilities and the number of fresh provision retail outlets in the vicinity. When identifying a suitable site, factors to be taken into account include the geographical location, existing and planned uses, usable area and ancillary transport facilities nearby.

Non-domestic Facilities in HA's Public Housing

6. For HA, there were some 1.75 million square metres of non-domestic facilities as at end-June 2018, of which about 49% are welfare and community facilities, 13% are shops and market stalls, 12% are factory buildings and the remaining 26% are used for other purposes such as government rented premises, offices, storerooms, etc. Furthermore, there are 154 car parks under HA, providing a total of about 30 300 parking spaces.

7. HA has been making continuous efforts to enhance its newly completed and existing retail and carparking facilities. To optimise resources and meet resident's needs, HA has since 2011 formulated a five-year rolling programme to conduct a "strengths - weaknesses - opportunities - threats" analysis on its retail and carparking facilities. In a bid to prioritise asset enhancement initiatives, HA would select projects, having regard to various factors and the change in circumstances, including locations of commercial facilities, surrounding environment, leasing position and estate population, and conduct detailed analysis. Since 2011, HA has completed a number of improvement projects including refurbishment of shopping centres, re-designation of trade mix, addition of shop premises, conversion of usage, etc. These asset enhancement initiatives are launched with a view to improving and enhancing the business potential of facilities. Besides, HA adopts proactive and flexible approaches in the marketing and letting of retail facilities according

to the market trend, and explores new avenues for providing more shopping choices and a variety of services to tenants and the communities. For example, in recent years, mobile banking services, mobile Chinese medical and physiotherapy services, as well as parcel lockers for on-line purchase delivery services have been introduced in some estates.

8. HA has also taken proactive measures to improve the vacancy situation of its retail facilities, and offers more shopping choices and a variety of services to the residents and the communities by means of marketing, re-designation of trade mix and adjustment of leasing strategies, including re-arrangement of market premises and conversion of such premises to other uses. Besides, HA closely monitors the usage of its carparking facilities, and, from time to time, implements various measures, including re-designation of parking spaces for other types of vehicles, flexible adjustment for the letting of parking spaces, letting of surplus parking spaces to non-residents, etc., in order to maximise the usage of such facilities and meet the needs of the residents and the communities.

9. Implementation of the above improvement/conversion programmes and adoption of such enhanced leasing strategies have brought about an improvement in the usage and rental situation of HA's commercial premises, as well as an increase in the usage rates of both retail spaces and carparks. HA will continue to review the usage of its non-domestic properties periodically, identify new opportunities, enhance the potential of these facilities and improve the business environment in order to meet the needs of the residents and ensure the best use of resources.

Enforcement of Lease Conditions

10. In respect of land leases, as mentioned in a number of Government's papers for the Subcommittee², owners of divested properties are subject to relevant laws, land lease conditions and contracts, just like other private property owners. The Government cannot interfere with the owners' lawful right to use their land so long as the relevant statutory requirements and the conditions in Government land leases are complied with. Land uses of the lots are generally specified in the land lease conditions, but the land leases do not impose restrictions on the mode of operation of the carpark. Therefore, the Lands Department (LandsD) does not have the right to interfere with the day-to-day operation of carparks if there is no breach of the land lease conditions.

² Paper Nos.: CB(4)801/17-18(01), CB(4)1128/17-18(03), CB(4)1133/17-18(01) and CB(4)1353/17-18(03).

11. According to LandsD, land leases of carparking facilities in the divested properties do not contain conditions restricting the divestment of the parking spaces. The owners concerned are not required to apply to LandsD should they have a plan to divest the parking spaces. The owners, however, are obliged to comply with the relevant lease requirements, such as those on user's identity.

12. Regarding the land lease issue of Tin Shing Court in Member's letter, pursuant to the lease conditions governing the lot where Tin Shing Court is, the lot shall provide parking spaces for vehicles belonging to the residents of the residential flats and their bona fide guests and visitors. In addition, the lease conditions of Tin Shing Court also require the lot be developed in compliance with the approved Planning Brief, which amongst other things, requires provision of parking spaces for vehicles belonging to shoppers. In respond to the Member's concern, LandsD had issued a letter to Link reminding them to strictly comply with the conditions imposed under lease. Link replied that they have complied with the lease conditions. LandsD will continue to follow up the case. If it is ascertained that Link lets parking spaces to persons other than those specified above, it would be a breach of lease conditions, and LandsD will take appropriate lease enforcement action.

Split-ratio Covenant

13. As mentioned in the Government's paper for the Subcommittee in May 2018³, assignment deeds of divested properties contain, on a case-by-case basis, certain restrictive covenants, including retail covenants, carparking covenants, welfare-letting covenants and split-ratio covenant. These assignment deeds have been registered at the Land Registry (LR). As in any property transactions, buyers and vendors of divested properties are obliged to clarify the rights and obligations associated with the properties, including any restrictive covenants. Legal advice shall be sought as and when necessary. Potential or new buyers may conduct a search of the assignment deeds at LR in order to have a clear understanding of the restrictive covenants that ought to be included in the purchase and resale of commercial facilities. Owners of divested properties have the responsibility to observe their duties under such covenants.

14. Regarding the split-ratio covenant, all commercial facilities (including carparks) in Home Ownership Scheme (HOS) courts were owned by HA before the divestment of such facilities in 2005 through The Link Real Estate Investment Trust (The Link REIT) (now known as Link). As the owner of these commercial facilities, HA, according to the Deeds of Mutual Covenant

³ Paper No.: CB(4)1128/17-18(03).

(DMCs) of HOS courts, pays a monthly management fee based on the number of shares it owns in the residential lots concerned. Apart from those requirements under DMCs, HA, out of goodwill, agrees to make contributions to the management and maintenance (M&M) expenses of certain “specific activities” in the common areas and common facilities of the HOS courts after negotiation, having regard to the circumstances of individual HOS courts and the requests of the Incorporated Owners (IOs). In this connection, prior to the divestment of its retail and carparking facilities, HA, as the owner of the commercial facilities in the 23 HOS courts, has been making additional contributions to the expenses of the “specific activities” according to a split-ratio agreed with IOs, but not every M&M expense item of common areas and common facilities in the HOS courts.

15. When HA was in the course of divesting its commercial facilities, some resident bodies asked for a continuation of the aforesaid cost-sharing arrangement. Having agreed to such an arrangement, the Link REIT set out the split-ratio covenant in the Property Agreement and provided an explanation in its Offering Circular. The Government had also briefed the Panel on Housing of the Legislative Council (LegCo) on the progress and informed Members of the split-ratio covenant arrangement⁴. The split-ratio covenant is set out in the assignment deeds of the divested properties in those 23 HOS courts⁵, all of which have been registered at LR for public inspection. Members of the public are all along aware of the cost-sharing arrangement and the split-ratio covenant.

16. The purpose of the split-ratio covenant is for the subsequent owners of the divested properties to continue with the goodwill initiatives of HA in those HOS courts. The split-ratio only applies to M&M expenses of certain “specific activities” in the common areas and common facilities of the HOS courts. The circumstances of these 23 HOS courts vary from one to another. According to the assignment deeds of the divested properties in some of these courts, the split-ratio covenant applies to management expenses, but such practice is not applicable in other HOS courts. Regarding maintenance works, the types of such works covered by the split-ratio covenant vary from estate to estate. All in all, the split-ratio does not apply without restrictions to all M&M expenses of all common areas and common facilities. Instead, it only applies to the “specific activities” of those HOS courts where HA has made contributions prior to its divestment of properties.

17. According to the terms of the split-ratio covenant, the divested properties remain subject to the covenant even if there is a transfer of ownership. Purchasers of such properties are obliged to sign a deed of undertaking with HA

⁴ Paper No.: CB(1)1787/04-05(05).

⁵ No Tenants Purchase Scheme estates were involved.

as a pledge to abide by the terms in the covenant. HA takes it seriously that all the terms of the split-ratio covenant have to be duly observed, and will consider taking actions as it may deem necessary in the event of any non-compliance. Should any breach be established, HA may consider taking legal proceedings for enforcement.

18. In response to the concerns and enquires raised by the public and some IOs at an earlier time, HA has contacted the management companies of the 23 HOS courts again to reiterate its position. Background information has also been provided for easy reference by the management companies and IOs. HA has been taking and will continue to take measures against divested property owners to ensure that the properties remain subject to the split-ratio covenant upon transfer of ownership. Members who are interested in the split-ratio covenant and HA's actions on this matter may refer to the Memorandum for the Commercial Properties Committee (CPC) of HA issued in July 2018⁶.

Single-operator Markets (SOMs)

19. The Government has explained to LegCo on various occasions⁷ about the policy objectives and related arrangements for the implementation of SOMs. Retail facilities under HA, including estate markets, generally operate in accordance with commercial principles. Since 1988, HA has adopted the single-operator letting arrangement for its markets, the purpose of which is to leverage on the professional operation capability and experience of the private sector, with a view to providing better shopping choices and service environment for residents. Since 1997, the above arrangement has been adopted in all HA's new estate markets. Among the 23 markets under HA, eight of them⁸ are let to single operators.

20. HA reviews the letting arrangement and monitoring measures for SOMs from time to time. The measures in place include those for the protection of stall operators and monitoring of single operators, so that the letting arrangement can be implemented more effectively. For the protection of stall operators, HA restricts the single operators from charging stall operators

⁶ Paper No. : CPC 18/2018.
(<https://www.housingauthority.gov.hk/en/common/pdf/about-us/housing-authority/ha-paper-library/PC18-18.pdf>).

⁷ Including the question on "Housing Authority's single-operator markets" raised by Member on 11 April 2018; the question on "The Hong Kong Housing Authority's single operator markets" raised by Member on 17 May 2017; the question on "Management of retail facilities in public housing estates" raised by Member on 16 March 2016; and LegCo Paper Nos. CB(1)1024/16-17(04) and CB(1)1466/16-17(01), etc.

⁸ Including Ching Long Market, Hung Fuk Market, Kwai Chung Market, Lei Muk Shue Market, Shui Chuen O Market, Tin Yan Market, and the newly completed Yan Tin Market and Ying Tung Market.

any fees apart from rent, management fee, air-conditioning charges and rates and requires the single operators to grant licence-fee-free periods to stall operators. Single operators are required to submit returns setting out all fees collected from stall operators. HA also restricts the amount of deposits and management fees, etc. that single operators can charge on stall operators. For the monitoring of single operators, relevant measures include regular inspections of markets and performance assessment over single operators, regulation over the proportion among different trades, restriction over the scale of direct operation by single operators, requirements on the single operators to carry out promotional activities and to publicise the letting of vacant stalls, etc.

21. Staff of HA carry out regular inspections on markets to ensure that the single operators comply with the tenancy conditions, maintain quality management services and establish good relationship with various stakeholders including stall operators, etc. HA will assess the performance of single operators every two months, taking into account feedbacks from Estate Management Advisory Committees. Whether the single operators are capable of managing the daily operation of the market effectively and smoothly is HA's most important assessment factor when making decisions on tenancy renewal. HA will provide feedbacks to those single operators who fall short of meeting the performance standards and require them to make improvements. For operators who fail to make improvement and comply with the tenancy conditions, HA has the right to terminate the tenancies before expiry and not to invite them to submit bids for other SOM contracts for a specified period of time.

22. At its meetings in March and August 2017, the Commercial Properties Committee (CPC) of HA deliberated the SOM policy and considered that the current monitoring mechanism for SOMs had struck a balance between the practical circumstances of commercial operations and shopping needs of residents. Hence, the single-operator mode of management and operation will continue to be adopted in new estate markets.

23. CPC is aware of the public concern over the operation of HA's markets under single operators. In this connection, CPC has approved a series of improvement measures to strengthen the protection of stall operators and monitoring of single operators. HA will continue to review the letting arrangement and monitoring measures for SOMs from time to time, so as to ensure the effective implementation of the single-operator mode of management and operation.

24. The overall average monthly rental of HA's major retail facilities and markets is about \$420 and \$640 per square metre respectively. As far as operation cost is concerned, HA's markets are part of the estate commercial facilities and thus there is no separated operating account. Operational figures

of the relevant estate commercial facilities have been incorporated in HA's commercial operating account.

Buying Back Divested Properties

25. HA divested 180 non-domestic properties in 2005 through the Link REIT, including retail and carparking facilities, in order to focus on its core function of providing subsidised public housing and improve its financial position in the short-to-medium term with proceeds from divestment. It was also considered that the efficiency of the commercial facilities would be enhanced under the operation of a private entity in accordance with commercial principles.

26. The Government understands that there are views in the community suggesting the Government or HA to buy back Link or individual divested properties. As mentioned by the Government on a number of public occasions⁹, the Government and HA have no plans to do so. The Government considers that buying back these properties is incompatible with public interests and the principle of prudent financial management, and is also inconsistent with the Government's policy objectives. Given the limited public resources, the Government and HA have to prioritise its resources and focus them on providing public housing.

Transport and Housing Bureau October 2018

⁹ Remarks by the Secretary for Transport and Housing in the motion debate on "Vigorously promoting healthy market competition to counteract the market dominance of Link REIT" at the LegCo Meeting on 23 November 2016; and the response by the to a question on "Provision of amenities ancillary to housing" raised by Member on 11 April 2018.